

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF ILLINOIS	)	
	)	
Petition for a Certificate of Public Convenience and	)	
Necessity, pursuant to Section 8-406.1 of the Illinois	)	
Public Utilities Act, and an Order pursuant to Section 8-	)	Docket No. 12-0598
503 of the Public Utilities Act, to Construct, Operate and	)	
Maintain a New High Voltage Electric Service Line and	)	
Related Facilities in the Counties of Adams, Brown,	)	
Cass, Champaign, Christian, Clark, Coles, Edgar, Fulton,	)	
Macon, Montgomery, Morgan, Moultrie, Pike,	)	
Sangamon, Schuyler, Scott and Shelby, Illinois.	)	

**AMEREN TRANSMISSION COMPANY OF ILLINOIS' PETITION FOR  
INTERLOCUTORY REVIEW**

Ameren Transmission Company of Illinois (ATXI) petitions the Illinois Commerce Commission (Commission), pursuant to Section 200.520 of the Commission's Rules of Practice, 83 Ill. Adm. Code § 200.520, for Interlocutory Review of the Administrative Law Judges' (ALJs) January 16, 2013 "Notice" (the Ruling) deeming the "ATXI petition to have been completely filed only as of January 7, 2013."

The reasoning behind the Ruling is not explained, but there is no basis for it in the Public Utilities Act or the Commission's rules. The ALJ Ruling was made in response to ATXI's inadvertent omission of 130 landowners (out of over 5,000 for the Project) from the filed landowner list, for the Alternate Route of the Pana Mt. Zion portion of the Project – an omission which ATXI sought to remedy by amending the list. But the Ruling's solution (which was not proposed by anyone) to this technical error is disproportionate to the problem. The Ruling creates an unnecessary delay in the approval process for the *entire* Illinois Rivers Project, because of an issue with just a small part of the Project. The ALJs' solution is not needed because, as will be explained: (1) all *statutory* notice requirements under Section 8-406.1 of the Act have been complied with, (2) the notice requirements of Section 200.150(h) of the

Commission's rules do not require the result that the Ruling arrives at, and (3) either the existing schedule can be modified to allow any additional landowners on the Alternate Route of the Pana Mt. Zion portion to fully participate, or, as Staff proposes, the Commission may enter an order dismissing solely the Pana-Mt. Zion segment of the Project. Thus, ATXI's recommendation is that the Commission reverse the Ruling, and either modify the schedule as shown on page 11 of ATXI's Reply (Attachment B), or enter an order dismissing the certificate request for the Pana-Mt. Zion line segment of the Transmission Line, without prejudice, and with leave for ATXI to re-file this portion of the line in accordance with the requirements of Section 8-406.1 or 8-406, as it elects.

## **I. INTRODUCTION**

ATXI filed the petition initiating this proceeding on November 7, 2012. In the petition, ATXI seeks issuance of a Certificate of Public Convenience and Necessity authorizing ATXI to construct, operate and maintain a new 345 kV electric transmission line ("Transmission Line") and related facilities, including certain new or expanded substations (the Transmission Line and related facilities are collectively the "Project"). ATXI Petition Exhibit C included a list of the names and addresses of each landowner whose property would be potentially impacted by the primary and alternative routes, as required by Ill. Adm. Code § 200.150(h). In early January, ATXI discovered the list of potentially affected landowners along the Alternate Route of the Pana – Mt. Zion portion of the Transmission Line was incorrect, such that not all the owners potentially affected by the Alternate Route were included in Petition Exhibit C. As a consequence, certain owners along the Alternate Route did not initially receive direct notice of this action from the Clerk of the Commission under 83 Ill. Adm Code Section 200.150(h).

ATXI filed a Motion for Leave to File Amended Landowner List and for Order Directing the Clerk to Reissue Notice to Certain Affected Landowners (Motion) on January 7, 2013

(Attachment A hereto), requesting leave to file an amended landowner list and direct the Clerk to notify affected landowners of this proceeding (as in fact has already happened). ATXI also suggested a “carve out” in the procedural schedule could also be ordered for these landowners.

Responses were filed by Staff and Colfax-Scott Land Preservation Group and Morgan, Sangamon, and Scott Counties Land Preservation Group, Macon County Property Owners, and Stop the Power Lines Coalition. Staff recommended dismissing just the Pana – Mt. Zion portion of the Project, so that it could be re-filed as a separate case. ATXI filed a Reply on January 15, 2013 (Attachment B hereto) explaining that all statutory notice requirements have been met, and the due process rights of property owners along the Alternate Route of the Pana – Mt. Zion segment of the Project have not been violated in any respect. Strict compliance with Section 200.150(h) of the Commission’s Rules of Practice is not required, ATXI explained – the omission of the landowners could be remedied through modification of the existing schedule. The Ruling, however, did not adopt that approach, or the approach proposed by anyone.

## **II. ARGUMENT**

### **A. ATXI Provided All Required Statutory Notices.**

There is no issue here of a failure of statutory notice – ATXI has met the notice requirements of Section 8-406.1. Although the Ruling does not explain its reasoning, it cannot be justified by any non-compliance with the statute.

Section 8-406.1(f) allows the Commission to grant a certificate “after notice and hearing.” 220 ILCS 5/8-406.1(f). Notice to whom? The statute tells us. Section 8-406.1(a) lists the information a utility “shall include” with a petition for expedited approval. With respect to notices, Section 8-406.1(a)(3) requires the submission of “information” (no particular form of the “information” is specified) showing:

- “[T]hat the utility had held a minimum of 3 pre-filing public meetings<sup>1</sup> to receive public comment concerning the Project in each county where the Project is to be located . . .;”
- that notice of these public meetings “shall be published in a newspaper of general circulation within the affected county once a week for 3 consecutive weeks . . .;” and that
- “[n]otice of the public meeting, including a description of the Project, must be provided in writing to the clerk of each county where the Project is to be located.”

220 ILCS 5/8-406.1(a)(3)(emphasis added).

The landowners along the Alternate Route of the Pana – Mt. Zion portion are located in Christian, Shelby and Macon counties – the same counties where the landowners along the primary route for this segment are located. (ATXI Ex. 4.2, pp. 163-170.) The landowners along the Alternate Route – as well as all other landowners on all other portions – did in fact receive “proper statutory notice.” ATXI established a project website. (ATXI Pet. ¶ 43; Ex. 4.0 (Murphy Dir.), p. 22.) It held the first public meeting more than three weeks later. (ATXI Pet. ¶ 43; Ex. 4.0, pp. 3, 22.) Nearly 100 public meetings were held thereafter. (ATXI Exs. 4.0, pp. 3-4; 4.1.) Notices were published for each public meeting in a newspaper of general circulation within the affected county. (ATXI Exs. 4.0, p. 14; 4.1; 4.8.) The clerk of each county also received written notice. (ATXI Exs. 4.0, p. 14; 4.7.) ATXI also published the required notice after it filed the Petition. (Certificate of Publication, filed December 11, 2012.) Everyone in the counties – whether they live near the Primary Route, Alternate Route, or nowhere near either route – received (or at least had access to) the same information. Indeed, some of the very landowners omitted from the list attended these public meetings. (Attachment A to ATXI Reply, Affidavit of Donell Murphy.) Thus, one cannot say landowners potentially affected by the

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<sup>1</sup> A dedicated Project website must be established at least three weeks prior to the first public meeting and remain on the web through the duration of the Project. 220 ILCS 5/-8-406.1(e).

Alternate Route had no way of knowing about this proceeding simply because they did not receive notice of the initial hearing from the Clerk.

Moreover, Section 8-406.1 clearly does not impose upon an applicant or the Commission the responsibility to identify or serve any sort of direct notice or other communication to individual landowners.<sup>2</sup> The statute establishes a process whereby information about a project is broadly communicated to the public. Interested parties may participate in the proceeding to the extent they deem necessary, from attending public meetings, to intervening in the case and actively pursuing alternate routes, to anything in between. The public process *before* a case is filed – and not the mailing of notices by the Clerk *after* the case is filed – is how the law dictates that potentially affected landowners be notified of siting proceedings.

In short, ATXI has fully complied with all the statutory notice requirements.

**B. The Requirements of Section 200.150(h) Do Not Require Resetting the Filing Date.**

Section 200.150(h) does not dictate the result arrived at in the Ruling. Section 200.150(h) requires “a list containing the name and address of each owner of record of the land as disclosed by the records of the tax collector . . . .” 83 Ill. Admin. Code § 200.150(h). The “land” referred to is private property where the proposed facilities will be “upon or across.” As ATXI witness Ms. Murphy discusses, the landowner lists were developed by determining the ownership of parcels within 250’ of the routes. (ATXI Ex. 4.0, p. 12.) Thus, ATXI’s Petition Exhibit C includes more landowners than it is required to identify under Section 200.150(h).

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<sup>2</sup> As the Commission itself has observed, “the Supreme Court has held, on numerous occasions, that landowners on a path proposed for certification have no right to notice of the proceedings addressing certification, because the granting of a certificate deprives them of neither their property nor of any interest therein. The certificate vests no possessory interest in the certificate holder.” *Quantum Pipeline Company*, Order, Dockets 96-0001/0318 (cons.)(Dec. 17, 1997) citing *Chi., Burlington and Quincy R.R. v. Cavanaugh* 278 Ill.608, 617 (1917).

The rule is also very clear on what the landowners are to be notified about: “The Commission shall notify the owners of record of the time and place scheduled for the initial hearing upon the application.” 83 Ill. Admin. Code § 200.150(h). The Clerk is not required to serve to the Petition to individual landowners. There is no requirement to tell landowners anything of substance about the case. All the rule requires is that landowners be notified of the “initial hearing.” No other notice of anything is required, at any point in the case.

The last sentence of Section 200.150(h) deserves mention as well. “The foregoing provisions for notice to owners of record *shall not be deemed jurisdictional* and the omission of the name and address of an owner of record from the list or lack of notice shall in no way invalidate a subsequent order of the Commission relating to the application.” 83 Ill. Admin. Code § 200.150(h)(emphasis added). The point of this section of the rule is this: the Commission may allow this proceeding to continue without the issuance of further notices, and its final order cannot be attacked solely because certain landowners did not receive mailed notice of the initial status conference. Thus, the error at issue here is merely technical, and can be resolved within the current statutory deadline. It does not require the ALJ’s solution.

Any insistence on strict compliance with Section 200.150(h) elevates form over substance. Commission rules may be waived, suspended or modified “to the extent permitted by law.” 83 Ill. Admin. Code § 200.30. Section 200.25 of the Commissions Rules allows exercise of discretion for reasons of fairness, expedition and convenience. Weighing the circumstances of this proceeding, and the standards of discretion for waiving, suspending or modifying Section 200.150(h), tilts the balance of equities in favor of ATXI’s or Staff’s proposal and requires reversal of the ALJs Ruling.

**C. ATXI's Modified Schedule or Staff's Proposal Should Be Adopted.**

Despite the fact that there is no issue with statutory notice, and Section 200.150(h) does not require the result proposed by the ALJs, the Ruling determines that the filing date in this case should be reset. This will unnecessarily delay approval of the entire Project due to a technical error in one section. Instead, the current (original) schedule can be modified. As ATXI explained in its Reply (pp. 10-11), the current schedule has flexibility to provide additional time for Pana – Mt. Zion Alternate Route landowners to participate. As the table at page 11 of the Reply shows, the schedule can be revised to give both the Pana – Mt. Zion Alternate Route landowner interveners, if any (and as of the date of this Petition, none of the 130 landowners had intervened), until February 4, 2013 to propose alternate routes (consistent with the 17 days from the December 14, 2012 Case Management Order that other intervenors received) and until March 4, 2013 to file Direct Testimony (almost 60 days from the January 7 date that these landowners were issued notice by the clerk). Under the same schedule, Staff and other interveners could have an additional week to prepare their Direct Testimony, *all while meeting the original statutory deadline*. In other words, the Pana Mt. Zion Alternate Route landowners can be accommodated, and other parties actually benefit from additional time.

Alternatively, in light of the unique circumstance created by the Ruling, ATXI has concluded that Staff's proposal is preferable to delaying the entire Project. Therefore, as an alternative, ATXI would not object to an order dismissing the certificate request for the Pana – Mt. Zion line segment of the Transmission Line, without prejudice, and with leave for ATXI to re-file this portion of the line in accordance with the requirements of Section 8-406.1 or 8-406, as it elects. If this alternative was adopted, however, given the proximity of the February 11, 2013 filing date for Staff and Intervener direct to the likely date of Commission action on this Petition,

ATXI recommends that its alternate schedule on page 11 of its Reply still be adopted (but without the carve out filings dates of February 4 and March 4 for the Pana- Mt. Zion landowners).

**D. Request for Expedited Ruling**

Given the upcoming filing deadlines in this case, ATXI requests that responses to this Petition be scheduled for January 23, 2013 and this Petition be placed on the Commission's agenda for the January 24, 2013 Bench Session, or at latest, the agenda for the January 29, 2013 Regular Open Meeting.

**III. CONCLUSION**

For these reasons stated above, the January 16, 2013 Ruling in this proceeding was in error. It should be reversed and ATXI's recommendation as discussed above should be adopted.



Dated: January 18, 2013

Respectfully submitted,

Ameren Transmission Company of Illinois

/s/ Albert D. Sturtevant

One of their Attorneys

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Macon, Montgomery, Morgan, Moultrie, Pike,	)	
Sangamon, Schuyler, Scott and Shelby, Illinois.	)	

**VERIFICATION**

I, Edward C. Fitzhenry, being first duly sworn, state that I am an attorney for Ameren Transmission Company of Illinois, that I have read the foregoing Ameren Transmission Company of Illinois' Petition for Interlocutory Review and that the facts stated there in are true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Edward C. Fitzhenry

Sworn to and Subscribed before me  
this 18<sup>th</sup> day of January 2013.

  
\_\_\_\_\_  
Notary Public



**CERTIFICATE OF SERVICE**

I, Albert D. Sturtevant, an attorney, certify that on January 18, 2013, I caused a copy of the foregoing *Ameren Transmission Company of Illinois' Petition for Interlocutory Review* to be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0598.

/s/ Albert D. Sturtevant

Attorney for Ameren Transmission  
Company of Illinois